



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

| | |
|----------------------------|--|
| Agency Name: | Boards of Nursing and Medicine, Department of Health Professions |
| VAC Chapter Number: | 18 VAC 90-30-10 et seq. & 18 VAC 90-40-10 et seq. |
| Regulation Title: | Regulations Governing the Licensure of Nurse Practitioners Regulations for Prescriptive Authority for Nurse Practitioners |
| Action Title: | Continuing competency |
| Date: | 3/19/02 |

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package .

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The Boards of Nursing and Medicine have adopted regulations in response to a need to provide assurance to the public that nurse practitioners who have the authority to prescribe controlled substances have continued to be competent to provide patient care. The Board of Medicine, in response to a statutory mandate in § 54.1-2912.1 that the Board "prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and /or any other requirement" has promulgated regulations for evidence of continued competence for all other professions that it regulates. In addition, House Bill 818 passed by the 2000 General Assembly included a provision requiring that the Boards of Nursing and Medicine to promulgate regulations pursuant to prescriptive authority that "ensure continued nurse practitioner competency" which may include the use of new pharmaceuticals, patient safety, and appropriate communication with patients.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

Changes to proposed regulations were adopted in final regulations to amend the requirement for a random audit of at least one to two percent of the licensees. The Board determined that it was more correct to state the requirement as an audit of “at least one percent.” Also, the proposed regulation contained a place to insert the effective date of the final regulation; with the adoption of the final regulation, that date has been inserted as May 8, 2002.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On March 19, 2002, the Board of Nursing and on February 7, 2002, the Board of Medicine adopted final amendments to 18 VAC 90-30-10 et seq., Regulations Governing the Licensure of Nurse Practitioners and 18 VAC 90-40-10 et seq., Regulations Governing Prescriptive Authority for Nurse Practitioners, in order to implement requirements for evidence of continuing competency.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*

2. *To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
3. *To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the*

same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.

12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The specific statutory mandate for the Board of Medicine to adopt regulations for practitioner continued competency is found in:

§54.1-2912.1 (Chapter 227) as enacted by the 1997 General Assembly **mandates** that the Board promulgate regulations for the establishment of continuing education requirements.

§ 54.1-2912.1. Continued competency requirements.

A. The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and/or any other requirement.

B. In promulgating such regulations, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system..

C. The Board may approve persons who provide or accredit such programs in order to accomplish the purposes of this section.

The Boards are also authorized by § 54.1-103 to specify additional training for licensees seeking renewal.

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

The mandate for the Board of Nursing is found in House Bill 818, passed by the 2000 General Assembly, which amended § 54.1-2957.01 to provide the following:

*The Board of Medicine and the Board of Nursing shall be assisted in this process by an advisory committee composed of two representatives of the Board of Nursing and one nurse practitioner appointed by the Board of Nursing, and four physicians, three of whom shall be members of the Board of Medicine appointed by the Board of Medicine. The fourth physician member shall be jointly appointed by the Boards of Medicine and Nursing. **Regulations promulgated pursuant to this section shall include, at a minimum, such requirements as may be necessary to ensure continued nurse practitioner competency which may include continuing education, testing, and/or any other requirement, and shall address the need to promote ethical practice, an appropriate standard of care, patient safety, the use of new pharmaceuticals, and appropriate communication with patients, and (ii) requirements for periodic site***

visits by physicians who supervise and direct nurse practitioners who provide services at a location other than where the physician regularly practices.

The Assistant Attorney General who provides counsel to the Board of Nursing has provided a letter of assurance that the amended regulations are consistent with statutory law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

With nurse practitioners assuming increasing responsibilities for patient care and an expanding authority to prescribe certain schedules of drugs, the Boards of Medicine and Nursing concur that some evidence on continued competency is essential to protect public health and safety. The purpose of any regulation of a profession is "for the exclusive purpose of protecting the public interest" (§ 54.1-100). According to the Code of Virginia, regulation is necessary to protect the health, safety or welfare of the public when the potential for harm is recognizable. In the practice of a nurse practitioner, there exists a clearly recognized potential for harm and a need to protect the public.

Regulation is further authorized when the practice of the profession requires specialized skills and assurances of initial and continuing professional and occupational ability. The Boards of Nursing and Medicine do not believe that current regulations provide such assurances, and that regulations requiring mandatory continuing competency are in keeping with its statutory responsibility to protect the public.

In its discussion of the need to require evidence of continued competency, the Committee of the Joint Boards identified three reasons why it is essential: 1) There is a statutory mandate as described above; 2) It is unprofessional conduct for a practitioner to continue treating patients without updating his knowledge and skills. Some experts estimate that the half-life of medical knowledge is seven years; others estimate that it is outdated in three to five years; and 3) In disciplinary cases before the Joint Boards, there is evidence that nurse practitioners who are guilty of practicing outside the scope of their training and certification have not maintained current or continued competency.

The Committee of the Joint Boards also determined that some evidence of current knowledge of new pharmaceuticals and appropriate prescribing practices is necessary. Legislation passed by the General Assembly expanded the prescribing authority for nurse practitioners to include Schedule V and VI drugs in 2000, Schedules IV, V and VI drugs in 2002 and Schedules III through VI in 2003. It is likely that knowledge acquired by a nurse practitioner in order to initially meet the requirements for prescriptive authority has become out-dated and may not have included drugs in schedules other than Schedule VI.

The Boards have reviewed mandatory continuing competency as required for other professions in Virginia and in regulations by other states. Among those professions whose regulations currently require continuing education or continued national certification for renewal of licensure in Virginia are doctors of medicine, osteopathy, podiatry and chiropractic, pharmacists, dentists, dental hygienists, optometrists, nursing home administrators, veterinarians, veterinary technologists, physician assistants, physical therapists, audiologists, speech-language pathologists, psychologists, social workers and licensed acupuncturists. Among other states, there are only seven that have no requirement for continued competency for advanced practice nurses. As the growth of technology and scientific knowledge escalates, it is essential for health care practitioners who make crucial decisions about the care of patients to stay abreast in their profession. Licensing boards have a statutory responsibility to not only assure minimal competency as a person enters a profession with initial licensure but to continue to provide assurance of continued competency for practitioners who renew licensure over a period of years.

Among the other states, there are ten that have some specific requirement for continued education for advanced practice nurses who have prescriptive authority or a specific hour requirement for continuing education in pharmacology. As the new drugs come on the market and new information about drug interactions and efficacy becomes known, it is essential for health care practitioners who make crucial decisions about the care of patients to stay current. Licensing boards have a statutory responsibility to not only assure minimal competency for a practitioner who is initially authorized to write prescriptions but to continue to provide assurance of continued competency for practitioners who renew that authorization over a period of years.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The substance of the proposed amendments for **18 VAC 90-30-10 et seq., Regulations Governing the Licensure of Nurse Practitioners** is a requirement that evidence of continuing competency be provided in order to renew licensure. After the effective date of the regulation, newly licensed nurse practitioners will be required to maintain current professional certification. Nurse practitioner licensed prior to that date will be required to maintain current professional certification or acquire a minimum of 40 hours of continuing education each biennium in the area of specialty practice in which they hold licensure.

The substance of the proposed amendments for **18 VAC 90-40-10 et seq., Regulations for Prescriptive Authority for Nurse Practitioners** is a requirement for at least eight hours of continuing education each biennium in pharmacology or pharmacotherapeutics. Further, there is a proposal to require at least four hours of continuing education for each year in which a practitioner license has been lapsed, not to exceed 16 hours.

Other amendments in both regulations provide for compliance requirements, requests for extensions or exemptions from all or part of the regulations, and retention of records.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Advantages to the licensees:

The continuing competency requirements are intended to provide some assurance to the public that licensees of the Board are maintaining current knowledge and skills, while providing the maximum amount of flexibility and availability to licensees. Members of the Boards estimate that the vast majority of practitioners already maintain professional certification or engage in enough continuing education to meet the requirements and should only have to maintain documentation of that certification and/or hours. The resources for earning the hours and engaging in the required learning are numerous and readily available in all parts of Virginia.

Disadvantages to the licensees:

For a small minority of practitioners who do not currently engage in any continuing learning in their profession, these requirements will represent an additional burden. However, it was determined by enactment of the statute and by the Boards' concurrence that those practitioners and their patients would greatly benefit from continuing education requirements, and that the public is better protected if there is some assurance of that effort.

Advantages or disadvantages to the public:

There are definite advantages of the proposed amended regulations to the public, which will have greater assurance that the licensees for the Board are engaged in activities to maintain and improve their knowledge and skills in providing care to their patients.

Advantages or disadvantages to the agency:

With the adoption of these regulations, the agency will be in compliance with a statutory mandate for evidence of continued competency for nurse practitioners. By recognizing the certifying bodies already named in regulation, it will not be necessary for the Boards to engage in the review and approval of continuing education courses and providers. Such an activity can be very time-consuming and costly to a board. The primary disadvantage lies in the need to verify compliance for a percentage of licensees selected in a random audit and the potential effect on non-compliance on the disciplinary caseload of the Committee of the Joint Boards.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

A public hearing was held before the Board of Nursing at the Department of Health Professions in Richmond on November 7, 2002. No comment was presented at that time nor was any written or electronically submitted comment received.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 90-30-10 et seq., Regulations Governing the Licensure of Nurse Practitioners is amended as follows:

18 VAC 90-30-20. Delegation of authority is amended to delegate to the Executive Director of the Board of Nursing the authority to grant extensions for compliance with continuing competency requirements.

18 VAC 90-30-100. Renewal of licensure is amended to specify that a nurse practitioner must attest compliance with continuing competency requirements in order to renew a license each biennium.

18 VAC 90-30-105. Continuing competency requirements. This new section requires for biennial renewal of licensure current professional certification in the area of specialty practice for all nurse practitioners initially licensed after the effective date of the regulations. If licensed prior to the effective date, the licensee must either hold current certification or obtain at least 40 hours of continuing education in the area of specialty practice as approved by one of the certifying agencies so designated in regulation. In addition, the regulation provides for retention of records for 4 years and a random audit by the board and for an extension or exemption for all or part of the requirements.

18 VAC 90-30-220. Grounds for disciplinary action against the license of a licensed nurse practitioner is amended to include failure to comply with continuing competency requirements as grounds for possible disciplinary action by the boards.

18 VAC 90-40-10 et seq., Regulations for Prescriptive Authority for Nurse Practitioners is amended as follows:

18 VAC 90-40-20. Authority and administration of regulations is amended to delegate to the Executive Director of the Board of Nursing the authority to grant extensions for compliance with continuing competency requirements.

18 VAC 90-40-100. Renewal of prescriptive authority is amended to specify that a nurse practitioner must attest compliance with continuing competency requirements in order to renew a license each biennium.

18 VAC 90-40-55. Continuing competency requirements. This new section requires that the licensee 1) address certain issues relating to patient safety, ethical practice, and standards of care, and 2) obtain at least 8 hours of continuing education in the area of specialty practice as approved by one of the certifying agencies so designated in regulation for each biennium. In addition, the regulation provides for retention of records for 4 years, a random audit by the board, and an extension or exemption for all or part of the requirements.

18 VAC 90-40-60. Reinstatement of prescriptive authority is amended to require at least four hours of continuing education in pharmacology or pharmacotherapeutics for each year in which a license has been lapse, not to exceed a total of 16 hours.

18 VAC 90-40-130. Grounds for disciplinary action is amended to include failure to comply with continuing competency requirements as grounds for possible disciplinary action by the boards.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulatory action would not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, or strengthen or erode the marital commitment. There may be a slight decrease in disposable family income for those nurse practitioners who have to fulfill certain requirements (testing/self-assessment modules/continuing education) in order to maintain national credentialing and continuing education in pharmacotherapeutics to maintain authorization to prescribe controlled substances.